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AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 27, 2004

## SENATE BILL

**No. 1438**

**Introduced by Senators Johnson and Perata**

**(~~Coauthor: Senator Murray~~)**

~~(Coauthors: Assembly Members Levine, Samuelian, and Strickland)~~

**(Principal coauthor: Senator Murray)**

*(Principal coauthor: Assembly Member Levine)*

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February 19, 2004

An act to add Article 4 (commencing with Section 19250) to Chapter 3 of Division 19 of the Elections Code, relating to elections.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1438, as amended, Johnson. Elections: voting systems.

Existing federal law, the Help America Vote Act of 2002, requires, among other things, that each voting system used in an election for federal office produce a permanent paper record with an audit capacity for that system, allow the voter to verify his or her votes before the voter's ballot is cast, and be accessible for individuals with disabilities. The act provides funding for these purposes.

Existing law requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements. Existing law also requires the Secretary of State to adopt rules and regulations governing any voting technology or systems used in the state that provide blind and visually impaired individuals with access that is equivalent to that provided to individuals who are not blind or visually impaired.

This bill would prohibit, on and after January 1, 2005, the Secretary of State from approving a direct recording electronic voting system that does not include an accessible voter verified paper audit trail, and prohibit, on and after January 1, 2006, a city or county from contracting for or purchasing a direct recording electronic voting system that does not include an accessible voter verified paper audit trail. In addition, the bill would require that, as of January 1, 2006, all direct recording electronic voting machines in use on that date, regardless of when contracted for or purchased, *shall have received federal qualification, as defined, and shall* include an accessible voter verified paper audit trail.

This bill would require that to the extent ~~federal funds that they~~ are available for the purposes of this article, ~~those funds be used before state funds federal funds or the Voting Modernization Fund, a special fund,~~ *shall be used. The bill would prohibit the expenditure of General Fund moneys for these purposes.*

By increasing the duties of local elections officials, the bill would impose a state-mandated local program.



~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4 (commencing with Section 19250) is  
2 added to Chapter 3 of Division 19 of the Elections Code, to read:  
3  
4 Article 4. Direct Recording Electronic Voting Systems  
5  
6 19250. (a) On and after January 1, 2005, the Secretary of  
7 State may not approve a direct recording electronic voting system  
8 ~~that does not include~~ *unless the system has received federal*  
9 *qualification and includes* an accessible voter verified paper audit  
10 trail.  
11 (b) On and after January 1, 2006, a city or county may not  
12 contract for or purchase a direct recording electronic voting  
13 system ~~that does not include~~ *unless the system has received federal*  
14 *qualification and includes* an accessible voter verified paper audit  
15 trail.



(c) As of January 1, 2006, all direct recording electronic voting systems in use on that date, regardless of when contracted for or purchased, shall *have received federal qualification and* include an accessible voter verified paper audit trail. If the direct recording electronic voting system does not already include an accessible voter verified paper audit trail, the system shall be replaced or modified to include an accessible voter verified paper audit trail.

19251. For purposes of this article, the following terms shall have the following meanings:

(a) “Accessible” means that the information provided on the paper record copy from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component.

(b) “Direct recording electronic voting system” means a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.

(c) “Voter verified paper audit trail” means a component of a direct recording electronic voting system that prints a contemporaneous paper record copy of each electronic ballot and allows each voter to confirm his or her selections before the voter casts his or her ballot.

(d) “*Federal qualification*” means the system has been certified, if applicable, by means of qualification testing by a Nationally Recognized Test Laboratory and has met or exceeded the minimum requirements set forth in the Performance and Text Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems, or in any successor voluntary standard document, developed and promulgated by the Federal Election Commission, the Election Assistance Commission, or the National Institute of Standards and Technology.

(e) “Paper record copy” means an auditable document printed by a voter verified paper audit trail component that corresponds to the voter’s electronic vote and lists the contests on the ballot and the voter’s selections for those contests. A paper record copy is not a ballot.

19252. To the extent ~~federal funds that they are available for expenditure for the purposes of this article, those funds shall be used before state funds~~ federal funds or moneys from the Voting Modernization Fund, created pursuant to subdivision (b) of

1 *Section 19234, shall be used. No moneys from the General Fund*  
2 *shall be expended for the purposes of this article.*

3 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~  
4 ~~Code, if the Commission on State Mandates determines that this~~  
5 ~~act contains costs mandated by the state, reimbursement to local~~  
6 ~~agencies and school districts for those costs shall be made pursuant~~  
7 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
8 ~~2 of the Government Code. If the statewide cost of the claim for~~  
9 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
10 ~~reimbursement shall be made from the State Mandates Claims~~  
11 ~~Fund.~~

12 *SEC. 2. Pursuant to Section 17579 of the Government Code,*  
13 *the Legislature finds that there is no mandate contained in this act*  
14 *that will result in costs incurred by a local agency or school district*  
15 *for a new program or higher level of service which require*  
16 *reimbursement pursuant to Section 6 of Article XIII B of the*  
17 *California Constitution and Part 7 (commencing with Section*  
18 *17500) of Division 4 of Title 2 of the Government Code.*

